

STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES BOARD

IN RE:  QWEST CORPORATION, f/k/a U S WEST COMMUNICATIONS, INC.	DOCKET NO. RPU-00-1 (TF-00-64)
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**ORDER ON APPLICATION FOR REHEARING**

(Issued March 9, 2001)

**PROCEDURAL HISTORY**

On March 15, 2000, Qwest Corporation, f/k/a U S WEST Communications, Inc. (Qwest), filed a proposed tariff identified as TF-00-64 in which Qwest proposed to deaverage its wholesale and retail rates in Iowa. Pursuant to rules adopted by the Federal Communications Commission (FCC), state public utility commissions are required to establish geographically deaveraged rates for unbundled network elements (UNEs) (Qwest's "wholesale" rates) by May 1, 2000<sup>1</sup>. See 47 C.F.R. § 51.507(f).

On January 11, 2001, the Utilities Board (Board) issued its "Final Decision And Order" (Order) in this docket, requiring that Qwest deaverage its rates for wholesale

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<sup>1</sup> On April 26, 2000, the Board filed a petition for a temporary waiver of the May 1, 2000, deadline, seeking an extension to December 31, 2000, see In re Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, *Petition of the Iowa Utilities Board for Temporary Waiver*, CCB/CPD No. 00-15, at 1-2. The Board's petition was granted by order released July 13, 2000. During the course of this docket, however, the parties requested and received multiple extensions of time, with the result that the Board was unable to issue this final decision and order by December 31, 2000. Accordingly, on December 19, 2000, the Board filed a petition for a limited additional extension of time, to January 23, 2001. As of the writing of this order, the FCC has not ruled on the Board's second petition.

services and its rates for business services that use the loop. The Board found that the terms of Qwest's price regulation plan, adopted pursuant to Iowa Code § 476.97 (2001), do not permit any changes to Qwest's residential rates at this time because the wholesale rate deaveraging ordered by the Board is not an exogenous factor affecting Qwest's residential rates.

On January 31, 2001, Qwest filed an application for rehearing of the Board's decision in Docket No. RPU-00-1. Qwest asks for reconsideration of the Board's rulings on the following issues:

- 1) Qwest's proposed changes to residential rates;
- 2) Deaveraging of Centrex Plus rates;
- 3) Timing of wholesale and retail rate revisions; and
- 4) Adjusting business measured service rates.

On February 14, 2001, the Consumer Advocate Division of the Department of Justice (Consumer Advocate) and McLeodUSA Telecommunications Services, Inc. (McLeod), filed answers to Qwest's application for rehearing. On February 28, 2001, Qwest filed a reply to the Consumer Advocate and McLeod answers. The Board will address each of the issues separately.

### **CHANGES TO RESIDENTIAL RATES**

In its final decision, the Board concluded that Qwest's business retail rates should be redesigned because UNE deaveraging will result in changes to Qwest's business revenues, expenses, and investment, as required by Iowa Code § 476.97(3)"d". In the absence of retail business rate redesign, UNE deaveraging

would create opportunities for uneconomic arbitrage that would adversely affect Qwest's revenues, which ultimately would affect its investment. If UNE prices in low-cost exchanges were decreased, but the business retail prices in those exchanges remained high, then CLECs would be able to buy UNE loops in the low-cost exchanges to compete with Qwest's artificially high business retail rates. At the same time, Qwest would continue to serve customers in high-cost exchanges at rates that are low compared to the deaveraged UNE loop rate established in this docket. Together, these circumstances satisfied the "exogenous factor" requirement of Qwest's price regulation plan and § 476.97.

This is only true for Qwest's business customers. Qwest's residential rates are currently below its UNE loop cost in every exchange, both before and after UNE deaveraging. This is the result of a variety of factors, primarily the fact that Qwest's retail rates are set on the basis of embedded cost while its UNE prices are based on forward-looking cost. Because of this pricing relationship, there is no opportunity for CLECs to purchase low-cost UNE loops to compete with a higher Qwest residential retail rate. Therefore, the Board concluded that, for purposes of Qwest's price regulation plan and Iowa Code § 476.97(3)"d", UNE deaveraging is an exogenous factor that can change Qwest's revenues, expenses, and investment only with respect to Qwest's business rates. Accordingly, only Qwest's business rates were changed to reflect UNE deaveraging in this docket.

**Qwest's Application for Rehearing**

In its application for rehearing, Qwest contends that the Board's conclusion that deaveraging of UNE loop rates will have no impact upon Qwest's retail residential revenues, investments, or expenses is not correct. Qwest argues UNE deaveraging allows competitive local exchange carriers (CLECs) to more easily compete with Qwest for business customers; business customers subsidize residential rates priced below cost; and, as a result, loss of business customers will harm Qwest's ability to serve residential customers. Qwest concludes the Order should be revised to recognize these lost subsidies and increase residential rates to recover a part of these lost subsidies. (Application for Rehearing at ¶¶ 4-7.)

**Consumer Advocate Answer**

Consumer Advocate maintains that wholesale deaveraging is not an exogenous factor for purposes of Qwest's price plan and the price regulation statute and that neither business nor residential rates can be lawfully increased in this proceeding. Therefore, Consumer Advocate opposes Qwest's request to reconsider the Board's decision on residential rate increases. (Consumer Advocate Answer at ¶ 2.) If Qwest's request is granted, Consumer Advocate requests a non-simultaneous briefing schedule so Qwest can identify in the record the evidence Qwest relies upon to support the factual assertions upon which its arguments rest. (Consumer Advocate Answer at ¶ 4.)

**McLeod Answer**

McLeod opposes reconsideration of this issue. McLeod argues Qwest wants to be made whole from the potential loss of revenues from business customers due to UNE deaveraging. (McLeod Answer at ¶ 2.) Qwest lost its right to be made whole when it chose alternative pricing regulation. (McLeod Answer at ¶¶ 3-5.) In addition, no evidence exists that Qwest will lose business customers or revenues, according to McLeod. Deaveraged UNE loops may make it more economic for CLECs to compete in certain markets, but it is pure speculation that these rates are low enough for CLECS to effectively enter these markets. In addition, the Board is allowing Qwest to reduce business rates such that the available margins to CLECs may not change.

**Qwest Reply**

Qwest responds to Consumer Advocate's argument by pointing out that Section III(G) of its approved price regulation plan clearly contemplates that proceedings before the Board to deaverage rates for UNEs "may be considered by the Board to be exogenous factors that warrant a change in [Qwest's] rate design." Qwest concludes that its price plan allows Qwest to change its retail prices upon deaveraging of the unbundled loop rate. (Reply at ¶ 2.) Qwest responds to McLeod by claiming that increases in Qwest's residential rates will enable CLECs like McLeod to more effectively compete with Qwest. (Reply at ¶ 3.)

**Analysis**

Qwest offers no new arguments in its request for reconsideration of this issue. The language in Section III(G) of Qwest's price regulation plan permits a Board

finding that UNE deaveraging is an exogenous factor, but it does not require such a finding. Moreover, the record does not contain sufficient information to support such a finding. For example, the record does not include an embedded cost study that would be needed to determine whether residential rates are actually being subsidized by business rates. In addition, there is no credible evidence that Qwest will lose business customers at a greater rate because of UNE deaveraging, particularly given Qwest's opportunity to adjust business rates consistent with the UNE deaveraging. This opportunity may result in no significant change to existing margins available to CLECs in low-cost exchanges. The Board will deny Qwest's application for rehearing on this issue.

## **CENTREX PLUS RATES**

### **Qwest Application for Rehearing**

Qwest requests the Board reconsider its decision to deaverage Centrex Plus to match the UNE zones, arguing the Board's conclusions that Centrex Plus is a basic communications service (BCS) and that it is directly affected by UNE loop deaveraging are incorrect. The loop portion of Centrex Plus is deregulated. Only usage rates for Centrex Plus are regulated. Therefore, the portion of Centrex Plus that is a BCS and, as such, regulated, is not directly affected by UNE loop deaveraging, according to Qwest. (Application for Rehearing, ¶ 7.)

Qwest also argues the Board's Order is inconsistent. (Application for Rehearing, ¶ 8.) The Order denies deaveraging of network access registers (NARs) because they are not affected by UNE loop deaveraging and, at the same time,

orders the deaveraging of Centrex Plus rates. NARs are used to divide Centrex Plus usage into volume blocks<sup>2</sup>. The rates for NARs and unblocked Centrex Plus usage are the only elements of Centrex Plus that are regulated by the Board. Therefore, according to Qwest, the Board Order denies the deaveraging of regulated NARs at the same time it orders the deaveraging of deregulated Centrex Plus.

Although the Board's order appropriately concludes the NAR is not directly affected by the loop deaveraging, Qwest further requests that the order be modified allowing the adjustment of NAR rates so they will be appropriately aligned with loop-based services. Prices for blocked Centrex Plus usage service are currently based on the same three rate groups as business loop-based service.

**McLeod Answer**

McLeod agrees that Centrex Plus service has been deregulated. (McLeod Answer at ¶ 7.) However, McLeod believes the Board has ample authority to impose on Qwest whatever Centrex Plus service requirements the Board deems necessary to ensure that Qwest is not being anticompetitive in its treatment of Centrex Plus customers. (Id.) McLeod states it is unclear which NAR rates Qwest is proposing to adjust, but if Qwest is proposing to only reduce blocked NARs then McLeod opposes this reduction as anti-competitive. (Id.) However, McLeod would not object to reducing the price of both blocking and non-blocking NARs consistent with the Board's order. (McLeod Answer at ¶ 8.)

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<sup>2</sup> Thus, the term "blocked" in this section refers to volume, or usage, blocks.

### **Qwest Reply**

Qwest argues that it has historically used a statewide rate for non-blocked NARs and there is no evidence in this record to support deaveraging of non-blocked NARs. However, Qwest's original filing included a proposal to realign the three blocked NAR rate groups to more closely correspond to realigned business rates. (Reply at ¶ 4.) Qwest believes this provides a sufficient evidentiary basis for redesigning rates for blocked NARs.

### **Analysis**

The record does not contain any information on the components that comprise Centrex Plus or the pricing and regulatory status of these elements. The Board understands that Centrex Plus has a regulated component that is tariffed and a deregulated component that is not tariffed. The tariffed component is referred to as blocked and unblocked Centrex usage through network access registers (NARs).<sup>3</sup> Therefore, the Board's Order may understandably appear to Qwest to be inconsistent when it denies deaveraging of NARs (the regulated portion of Centrex Plus) at the same time it orders deaveraging of Centrex Plus (the deregulated portion). That apparent inconsistency is based on the Board's finding that only rates for loop-based services can be deaveraged in this docket; NARs are not loop-based while the remainder of Centrex Plus uses the loop. The Board's order consistently applies this rule.

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<sup>3</sup> Although Qwest's tariff for unblocked Centrex usage does not refer to the NAR, it appears to be pricing the same component. This is consistent with McLeod's response, which refers to blocked and unblocked NARs.



Qwest argues the loop-related portion of Centrex Plus is deregulated and, as such, beyond the pricing jurisdiction of the Board. McLeod argues the Board has ample authority to impose on Qwest whatever requirements the Board deems necessary to ensure that Qwest is not being anticompetitive with respect to Centrex Plus service. (McLeod Answer at ¶ 3.) McLeod argues the Board can deaverage the deregulated loop component of Centrex Plus if the Board finds Qwest is being anticompetitive. McLeod does not, however, pursue this point and the record lacks evidence of anticompetitive activity.

The Board did not intend to price the deregulated component of Centrex Plus. This record does not provide sufficient evidence of anticompetitive behavior on Qwest's part to justify, at this time, an order regarding a deregulated service. The Board will therefore grant Qwest's application for rehearing on this issue and will not require deaveraging of the deregulated components of Centrex Plus services. Therefore, the only pricing at issue in this docket is for blocked and unblocked NARS.

Qwest's request regarding the pricing of NARs is not entirely clear. Rates for blocked Centrex Plus NARs are currently aligned with business rates and vary depending upon the geographic zone being served. Rates for unblocked Centrex Plus NARs are not currently aligned with business rates and, as such, are uniform across the state. In its original proposal, Qwest proposed changing the rate group component of blocked NARs and charging a uniform statewide rate. In its application for rehearing, Qwest seeks to align the blocked NAR rates with its new business rates in order to maintain the existing rate relationship. McLeod indicates it would

agree with aligning the NAR blocked rates as long as the unblocked NAR rates (which currently are not rate group sensitive) are also aligned with new business rates. Qwest responds that there is no evidence in the record to support deaveraging unblocked Centrex Plus NARs.

The Board will reject the request to deaverage NARs, blocked or unblocked. Any adjustment to NAR rates would violate the first principle upon which the Board is basing its retail rate decision – that retail rates subject to change in this docket must be basic communications services that rely upon the loop and that are therefore directly affected by UNE loop deaveraging. The NAR is a basic communications service, but it is not directly affected by UNE loop deaveraging. Therefore, the Board's Order is correct at pages 30 and 31 when it states:

Further, some of the BCS rates that Qwest proposed to adjust in this docket are for services that are not primarily associated with the loop and are therefore not directly affected by UNE loop deaveraging. Basic business services for which Qwest proposed rate changes, but which are not directly affected by UNE loop deaveraging include DID Trunk Terminations, Network Access Registers, and Hunting. The rates for these services cannot be adjusted in this docket because the identified exogenous factor (deaveraging and the resulting arbitrage) will not affect these services.

The order is clear on this point. No change to the regulated portion of Centrex Plus rates (that is, the blocked and unblocked NARs) will be approved in this docket. Furthermore, the portion of the Board's order requiring the deaveraging of Centrex Plus rates will be removed, because the loop related component of Centrex Plus is deregulated and, therefore, beyond the Board's pricing authority, based upon the record made in this docket.

## **TIMING OF RETAIL RATE REVISIONS**

### **Qwest Application for Rehearing**

Qwest asks that the Board permit it to implement the wholesale and retail rate revisions on separate schedules. (Application for Rehearing, ¶ 9.) Qwest believes it can implement revisions to its wholesale UNE loop rate within approximately six weeks, but the retail rate revisions will require approximately 150 days to complete billing cycles. (*Id.*) Qwest asserts the UNE rate deaveraging is required by the FCC and should proceed as expeditiously as possible, while the retail rate revisions can proceed on a different schedule, as directed by the Board. (*Id.*)

Qwest asks the Board order that the wholesale rates be deaveraged within six weeks, while adjustment of retail rates would be scheduled based upon completion of new accounting and billing releases on June 14, 2001.

No other party commented on Qwest's request.

### **Analysis**

Minor timing differences between wholesale and retail deaveraging are unlikely to have significant consequences for Qwest and its customers. Qwest's request is reasonable and will be granted.

## **ADJUSTING BUSINESS MEASURED SERVICE RATES**

### **Qwest Request**

Qwest notes that, at page 31 of the Order, Business Measured Service was omitted from the list of services contained in Qwest's proposals for retail rate adjustments. (Application for Rehearing, ¶ 10.) Because Business Measured

Service is a loop-based service that was included in Qwest's original proposal, Qwest asks that the rates for this service also be adjusted.

**Consumer Advocate Response**

As described above, Consumer Advocate continues to argue that wholesale deaveraging is not an exogenous factor for purposes of price plan regulation. (Consumer Advocate Answer at ¶ 3.) Consumer Advocate therefore opposes Qwest's request to allow redesign of Business Measured Service rates.

**Analysis**

Business Measured Service was inadvertently omitted from the list of services on page 31 of the Board's Order. It was one of the services that Qwest originally proposed for rate redesign; it uses the loop; and it is otherwise indistinguishable from the business services that the Board already found should be redesigned. The Board will grant Qwest's request for reconsideration on this issue and correct the omission from the Board's Order.

**ORDERING CLAUSES**

**IT IS THEREFORE ORDERED:**

The "Application For Rehearing" filed by Qwest Corporation on January 31, 2001, is granted in part and denied in part. Qwest's request that it be permitted to deaverage retail residential rates is denied. Qwest's other requests for rehearing are granted to the extent that the Board's "Final Decision And Order" issued in this docket on January 11, 2001, is modified as follows:

a. The first full paragraph on page 31 will read (additions underlined, deletions stricken):

This leaves the following business BCS rates proposed by Qwest as candidates for redesign: Business Flat, Business Flat – Additional Lines, Business Measured Service, Standby Line, PBX Trunks (in various forms), Public Access Lines (again, in various forms), ISDN, Centrex, 2-way/4-wire trunks, Inward DID for Call Transfer, and Switchnet 56. Each of these is a BCS that is primarily associated with the loop, the rate for which should therefore reflect the UNE loop price being set in this docket. ~~In addition to the services proposed by Qwest for rate redesign in this proceeding, the Board will also order the deaveraging of Centrex Plus into the UNE zones approved by the Board. Centrex Plus is a BCS and is directly affected by UNE loop deaveraging.~~ This is the first criterion Qwest should use in redesigning the eligible business BCS retail rates.

b. Ordering Clause No. 2 on page 35 will read:

2. On or before ~~45 days~~ six weeks from the date of issuance of this order, Qwest shall file a revised proposed tariff setting forth deaveraged UNE loop prices ~~and BCS business retail rates~~ complying with the criteria adopted by the Board in this order. On or before 150 days from the date of issuance of this order, Qwest shall file a revised proposed tariff setting forth BCS business retail rates complying with the criteria adopted by the Board in this order.

Qwest shall consult with Board staff in the preparation of these compliance

tariffs and all parties shall be given a reasonable opportunity to participate in the preparation of the compliance tariffs. When ~~the~~ each set of compliance tariffs is filed, any party may file an objection to the compliance tariffs within 20 days of the date the tariffs are filed. If any such objections are filed, the Board will order such further proceedings as may be appropriate in the circumstances.

**UTILITIES BOARD**

/s/ Allan T. Thoms

ATTEST:

/s/ Judi K. Cooper  
Acting Executive Secretary

/s/ Diane Munns

Dated at Des Moines, Iowa, this 9<sup>th</sup> day of March, 2001.